

# Filing an Appeal or Waiver Request

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Any decision made by USAC or the SLD can be appealed by the adversely affected party. Two organizations review and decide appeals: USAC and the FCC. All appeals must first be submitted to USAC. The one exception is if the appeal is related to a rule violation and the appealing party wants to request that the rule be waived then the waiver request must be submitted to the FCC. This is because USAC has no authority to waive the E-rate program rules. If an appeal is submitted to USAC and denied, a further appeal may be submitted to the FCC. Do not send an appeal to both organizations at the same time.

All appeals **MUST** be submitted (postmarked or filed online) to either USAC or the FCC within 60 days of the date of the USAC decision. If the 60-day appeal deadline is missed, the applicant must request a waiver of the appeal deadline as part of your appeal. In such a situation, be very specific about why you missed the appeal deadline and why it is in the public interest to grant a waiver of the deadline. The FCC is very stringent in deciding whether to consider and grant the merits of late-filed appeals.

## **FCC Rule Waiver Requests**

A waiver is a request to waive an E-rate program requirement that is codified in a FCC regulation. For example, missing the Form 471 application filing window deadline requires the FCC to grant a waiver of the deadline. Please note that waivers are not granted often: only in special circumstances and when a deviation from the rules would serve the public interest. The waiver standard generally requires a showing of circumstances that could not be avoided even with careful planning.

## **FILING AN APPEAL WITH USAC**

### **1) What Information to Include in Your Appeal**

The following information must be included in a letter of appeal. If USAC is unable to process the appeal because of missing documentation, the appeal will be denied for lack of information.

- Applicant Name and Billed Entity #
- Contact information including name, address, telephone number, and email address of the person who can discuss the appeal with USAC in detail;
- Provide documentation of USAC's decision;
- Include supporting documentation such as forms and previous correspondence
- Explain the appeal to USAC in as much detail as possible;
- Identify a problem and the reason for its appeal; and
- Explain precisely the relief sought through this appeal.

All appellants will receive acknowledgment of the appeal upon receipt. USAC will review all complete appeals and respond with its decision in writing. The more detail you provide in your letter of appeal, the easier it will be for USAC to review your appeal and hopefully grant the requested relief.

## 2) How to Submit Your USAC Appeal

Beginning in FY 2016, appeals must be submitted in EPC. From your Landing Page, select “Appeal.”

### My Landing Page



[Funding Request Report](#) | [FCC Form 470](#) | [FCC Form 471](#) | [FCC Form 486](#) | **Appeal** | [Manage Users](#) | [Manage Organizations](#) | [USAC Website](#) | [Contact Us](#) | [Help](#)

- You will then be asked to complete a General Information Page including a nickname for your appeal, the applicable Funding Year and the contact person for the appeal.
- In the next screen, you will be asked to identify the FRNs that you are appealing. You must select at least one FRN but have the option to select multiple FRNs. All FRNs that have been funded for a particular funding year will appear as options to be selected. Ignore the filter feature – it’s not necessary until you have so many FRNs that you want to search to locate the particular one.
- In the next screen, you will choose the particular type of USAC decision you want to appeal from the drop down box, then provide a narrative description of the appeal and then upload one or more files containing your appeal. Be sure to press the green Submit button to finalize and submit your appeal.

**Appeal Details**

What type of adverse decision would you like to appeal? ⓘ \*

-- Choose a Decision --

- Choose a Decision --
- FCC Form 471 Funding Commitment Decision
- Invoicing - Service Provider Invoice (SPI)
- Invoicing - Applicant Invoice (BEAR)
- Invoice Deadline Extension Request
- FCC Form 486 Notification (Cancellation, Modification)
- Commitment Adjustment (COMAD/RIDF)
- CIPA (Children's Internet Protection Act)
- Post Commitment Change Request (Service Substitution, SPIN Change, Entity Removal)
- FCC Form 500 Notification
- Good Samaritan Request
- Other

Narrative \*

0/2000 characters

Please explain the reason for your appeal. If you are appealing multiple decisions by the Administrator (USAC), list all of the decisions you are appealing for FRN(s). You may upload supporting documentation to help further explain your appeal. Please remember that waivers of an official E-rate rule can only be sought at the Federal Communications Commission (FCC), not USAC (this would include such appeals as seeking a waiver of the rule that an invoice extension be filed before the last date to invoice and appeals seeking a waiver of the FCC Form 471 deadline). Conversely, the FCC will not accept appeals of USAC decisions that have not first been appealed to USAC (such as late FCC Form 486s where there is no FCC rule governing the deadline). See 47 C.F.R. § 54.719.

**Upload Document**

New Document #1 ⓘ

Choose File No file chosen

Please note that the document upload is not required to proceed with the Form

Cancel Back Submit

## **FILING AN APPEAL WITH THE FCC**

### **1) What Information to Include in Your Appeal**

The following information must be included in a letter of appeal.

- Indicate CC Docket No. 02-6 on the first page of your appeal;
- Applicant Name and Billed Entity Number;
- Contact information including name, address, telephone number, and email address of the person who can discuss the appeal with the FCC in detail;
- Provide documentation of USAC's decision or what rule violation is being appealed;
- Include supporting documentation such as forms and supporting documents;
- Explain the appeal to the FCC in as much detail as possible;
- Identify a problem and the reason for its appeal; and
- Explain precisely the relief sought through this appeal.

If you are submitting a letter of appeal requesting review of a decision made by USAC, please use the language "Request for Review" on the first page. If you are filing a request for a waiver of a deadline, please use the language "Request for Waiver" or "Waiver Request," so that it is clear what you request.

### **2) How to file your FCC Appeal**

Submit your appeal electronically using the FCC's filing system that is online at <https://www.fcc.gov/ecfs/filings>. It is advisable to convert your file to a PDF format for uploading to the FCC. On the next page there is a screen print of the online filing system with notes to explain what fields must be completed and what information should be provided.

Submit your FCC Appeal or Waiver Request electronically at <https://www.fcc.gov/ecfs/filings>

Submit a Filing

1 FILING 2 REVIEW 3 CONFIRM

NOTE: You must press enter after these entries.

Proceeding(s) "02-6" press ENTER key

Name(s) of Filer(s) Name of School, District, Library

Law Firm(s) Add Lawfirm(s). Press ENTER key after each entry

Attorney/Author Name(s) Name of Person submitting Appeal or Waiver Request

Primary Contact Email Email address of person who can answer questions

Type of Filing Drop Down Box – select Appeal or Waiver as appropriate

File Number

Report Number

Bureau ID Number

Address of Filer

Address  International

Address 2

City School or Library Mailing Address

State

ZIP

Upload Documents Click or drag Click to Browse and Upload Appeal/Waiver document in PDF format or drag/drop

Note: You are filing a document into an official FCC proceeding. All information submitted, including names and addresses, will be publicly available via the web.

Email Confirmation

Continue to review screen

Submit

Check this box so that you will receive an email confirmation of the submission.

Then select Continue to review Screen to verify accuracy of information and select the Blue Submit button to actually submit your filing.

# Appeals Guidelines

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During the appeal review process, USAC will verify that the original Program Integrity Assurance (PIA) review was performed in compliance with program requirements and that the correct decision was achieved. If USAC made an error during the original PIA review of the application, USAC will correct the error.

For example, during PIA review, USAC lowered the discount rate requested by the applicant. During the appeal review process, USAC will determine if the proper procedures were followed and whether the applicant was given the opportunity to provide supporting documentation to justify the higher discount rate. If the appeal review process determines that procedures were not followed and the applicant was not given an opportunity to provide that documentation, the applicant will be able to do so before the appeal review process has concluded. USAC will grant the appeal and approve the discount rate based on the supporting documentation available.

## **New Documentation Provided**

In general, a PIA reviewer will contact the applicant and ask for all information necessary to make decisions about an application. If that contact does not occur or the applicant is unable to respond to the request, and funding is denied, USAC may grant an appeal when the appellant provides such original documentation.

For example, during PIA review, the applicant indicated that it did not have a signed contract and USAC denied funding because there was no signed contract. On appeal, the applicant claims that the requested services are services provided under tariff and not covered by a contract. USAC will generally accept this new information on appeal.

However, USAC will not grant this appeal if the documentation provided on appeal contradicts information contained in the original file and the applicant is unable to resolve the discrepancy.

For example, if the applicant had provided an unsigned copy of a contract during the review of its application, USAC will generally not accept the applicant's claim on appeal that it is a non-contractual tariffed service since it contradicts the documentation previously provided.

## **Policy Changes or Clarification**

If the Federal Communications Commission (FCC) issues a policy clarification or adopts a new policy that would affect USAC's original decision, applicants who submitted a timely appeal may be given the benefit of the new or changed policies. However, not all policies apply retroactively.

## **Accepting New Information**

USAC will generally accept new information on appeal consistent with these guidelines. If the appellant submits new information on appeal which contradicts information currently in the file, USAC will give the appellant an opportunity to explain the discrepancy. However, if the appellant is unable to explain the discrepancy, USAC will not accept the new information submitted on appeal.

USAC will not accept new information on appeal if it is apparent that the documentation submitted is not the original documentation and was instead, created in response to a USAC request during the appeal review.

USAC also may not accept new information on appeal if it is clear that the applicant was not working with USAC in good faith. For example, if the applicant refused to provide the documentation during the original review of the application or did not respond to USAC inquiries, USAC may not accept the new information submitted on appeal.

Finally, it is important to understand that USAC can grant an appeal assuming no other issues are identified during the appeal review that would lead to a denial. If, on appeal, the basis for a funding denial is successfully refuted, USAC must examine all remaining aspects of the funding request to ensure that all program rules were met. If another reason for denial is not appealed or the appellant does not present a successful argument to USAC's original decision, the appeal will be denied. All funding request denial reasons must be overcome on appeal for USAC to fund the Funding Request Number (FRN).

If USAC makes a new decision to deny funding, the appellant will have 60 days from the date of USAC's decision letter to file a new appeal with the FCC.